

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JACK ACCARDI, JR.,

Plaintiff,

MEMORANDUM AND ORDER

-against-

CV 13-0641 (LDW) (SIL)

USAA CASUALTY INSURANCE
COMPANY, *et al.*,

Defendants.

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WEXLER, District Judge

Plaintiff Jack Accardi, Jr. (“Accardi”) brought this action in state court against defendants USAA Casualty Insurance Company (“USAA”), Homeward Residential, Inc. (“HRI”), and Wells Fargo Bank, N.A. (“WFBNA”). Defendants removed the action to this Court based on diversity jurisdiction. Accardi settled and discontinued the action as against USAA. Now, upon completing discovery, WFBNA and HRI move, and Accardi cross-moves, for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

Briefly stated, the action arose from a fire that caused substantial damage to Accardi’s property located at 10 Hampton Lane, Amagansett, New York (the “Property”). At the time of the fire, WFBNA held a note and mortgage on the Property; HRI serviced the note and mortgage; and USAA provided insurance coverage on the Property. After the fire, Accardi filed a claim with USAA. The

claim was adjusted after arbitration, and USAA disbursed various payments. Accardi claims that WFBNA and HRI breached the mortgage agreement by withholding a portion of the insurance proceeds, purportedly preventing him from completing repairs to the Property and resulting in him selling the Property for substantially less than if the repairs had been completed.

Upon consideration of the supporting and opposing papers, the Court finds that genuine disputes of material fact exist precluding the entry of summary judgment. *See* Fed. R. Civ. P. 56(a) (party seeking summary judgment must demonstrate that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law”); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Accordingly, WFBNA and HRI’s motion for summary judgment is denied; and Accardi’s cross-motion for summary judgment is denied.

SO ORDERED.

_____/s/_____
LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
September 24, 2014